

RYAN J. MENDOZA
Claimant

CROSS MIDWEST TIRE
Respondent

FEDERATED MUTUAL INSURANCE COMPANY
Insurance Carrier

The present appeal comes before the Appeals Board because the ALJ entered a preliminary order requiring respondent to pay certain medical expenses. Respondent argues that the ALJ does not have the authority to order, at a preliminary hearing, the payment of medical expenses incurred by claimant prior to filing of claimant's Application

for Preliminary Hearing. Respondent cites K.S.A. 44-534a(a)(2) which allows for an award of temporary total disability compensation which predates the filing of the application "if the administrative law judge finds from the evidence presented that there were one or more periods of temporary total disability prior to such filing date," But, the statute gives no such specific authority with regard to an award for medical compensation.

The Appeals Board has limited jurisdiction to review preliminary hearing orders. K.S.A. 44-551(b)(2)(A) provides that "[i]f an administrative law judge has entered a preliminary award under K.S.A. 44-534a and amendments thereto, a review by the board shall not be conducted under this section unless it is alleged that the administrative law judge exceeded the administrative law judge's jurisdiction in granting or denying the relief requested at the preliminary hearing." In addition, K.S.A. 44-534a(a)(2) lists several findings concerning issues which, if in dispute, are to be considered jurisdictional and subject to review by the Board. A finding concerning payment of a particular medical bill or bills is not one of those jurisdictional issues.

K.S.A. 44-534a gives an ALJ the authority to conduct a preliminary hearing which shall be summary in nature and "[u]pon a preliminary finding that the injury to the employee is compensable and in accordance with the facts presented at such preliminary hearing, the administrative law judge may make a preliminary award of medical compensation and temporary total disability compensation" The employee's entitlement to medical compensation is not disputed. What is disputed is the ALJ's authority to award the benefits requested at preliminary hearing. This issue is only jurisdictional and therefore appealable to the Appeals Board from a preliminary order if the ALJ exceeded his jurisdiction in making the order.

There is no question that the awarding of preliminary benefits is discretionary and not mandatory. Accordingly, the second issue as to whether or not the medical bills should be ordered paid is not a jurisdictional issue and therefore is not appealable to the Appeals Board from a preliminary hearing.

The Appeals Board disagrees with the respondent's interpretation of K.S.A. 44-534a concerning an ALJ's authority to order medical benefits. Before May 22, 1998 K.A.R. 51-3-5a provided in pertinent part that:

"Compensation shall be awarded by the administrative law judge, if appropriate, for temporary total disability compensation and medical compensation from the date of receipt of the application for preliminary hearing by the division of workers' compensation. Except in highly unusual circumstances, the administrative law judge shall not award compensation for the period of time prior to the filing date of the application." (Emphasis added.)

The present version of K.A.R. 51-3-5a no longer contains that language. The amendments to the regulation do not indicate an intent to limit an ALJ's authority to award compensation prior to the date of the filing of the application for preliminary hearing and the statute contains no such limitation. The statute places limitations on awards of past temporary total disability compensation, but contains no similar limitation on an ALJ's authority to award medical compensation. The Appeals Board found before the amendment to the regulation that the ALJ had authority to award the payment of past medical treatment at a preliminary hearing. This authority continues now without the limitations contained in the former version of K.A.R. 51-3-5a.

WHEREFORE, it is the finding, decision, and order of the Appeals Board that the respondent's and insurance carrier's appeal from the October 26, 2000 Order Denying Temporary Total Compensation should be, and is hereby, dismissed.

IT IS SO ORDERED.

Dated this ____ day of February 2001.

BOARD MEMBER

c: John J. Bryan, Topeka, KS
Kip A. Kubin, Overland Park, KS
Brad E. Avery, Administrative Law Judge
Philip S. Harness, Director